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After affirmative action

Affirmative action is an issue that creates a lot of discussion. Among American policy-makers we can easily find advocates as well as opponents of this policy. *Affirmative action* and all the problems it has caused reflect the complexity of social and racial relations in the United States. *Affirmative action* itself, as a public policy designed to eliminate past and present discrimination based on race, color, or ethnicity, was formulated in the 1960s and is considered to be one of the successes of the civil rights movement. The legal framework for *affirmative action* was created by the Supreme Court decision in the Brow vs. Board of Education trial in 1954, which overturned the earlier Supreme Court decision in *Plessy vs. Ferguson* of 1896 that had upheld a "separate, but equal" doctrine. The introduction of the *Bill of Rights* in 1964 gave further impetus for the development of *affirmative action*, as a part of desegregation in educational institutions.[1]

Positive discrimination was especially popular among US higher education institutions during the 70s and 80s as a method of supporting the advancement of formerly discriminated races or ethnic groups, by making the student body reflect the diversity of the particular state or community. Usually it was based on a quota system with a set number of places reserved for discriminated groups. This system worked, more or less, for some period of time. The most obvious result was the increase of the number of non-white students at American colleges and universities. Between 1976 and 1996 the number of Black students enrolled in graduate or first professional programs rose from 91,000 to 146,000, while the number of students of Latin-American origin rose from 31,000 to 87,000. From 1980 till 2000 the percentage of people aged 18–25 who were enrolled in college or university rose from 16 to 22% among the Hispanic population and from 19 to 31% among Blacks.[2] These undisputable figures reflect the unquestionable success of the *affirmative action*.

But almost since the very beginnings of *affirmative action* there have been some critics of this policy. Among them are Thomas Sowell from the University of California, Berkeley and Shelby Steele from the Hover Institution of Stanford University. It is important to note that both of them are of African-American origin. Sowell has stated that affirmative action diminished the real achievements of Blacks at universities because of double standards–during selection procedures admission offices required lower SAT or ACT scores than those of the white population.[3] Shelby Steele, with his concept of "*white guilt*", maintains that affirmative action in fact petrified race

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[1] See: W.G. Bowen, D. Bok, *The Shape of the River*, Princeton University Press: Princeton 1996, p. 1–10;

M. Sykes, *The Origins of Affirmative Action*, http://www.now.org/nnt/08-95/affirmhs.html, (November 5, 2003).

[2] *Condition of Education 2002*, National Center for Educational Statistics, Washington 2002, p. 132. *Status and Trends in the Education of Blacks*, National Center for Educational Statistics, Washington 2003, p. 93.

[3] Th. Sowell, *Amerykańskie szkolnictwo od wewnątrz*, Wydawnictwo Wyższej Szkoły Pedagogicznej, Rzeszów 1996, pp. 149–269.

or ethnic barriers in American society, since it is based on race and ethnicity themselves.[4]

The situation changed in the 1990s, when some people – that is, white applicants that were not admitted although they had better scores than their African-American colleagues – brought their cases to court. In 1992, Cheryl Hopwood was denied admission to the University of Texas Law School, although her achievements were better than many of the admitted minority applicants. She brought her case to court and the final decision of the Fifth Circuit of the Supreme Court in 1996 stated that it had been a violation of the Fourteenth Amendment of the Constitution. The Supreme Court verdict forced the government of the State of Texas (with George W. Bush as then governor) to stop affirmative action among their public higher education institutions.[5]

Two cases – Gratz vs. Bollinger and Grutter vs. Bollinger – began in 1997 when two applicants to the School of Law of the University of Michigan complained that they had not been admitted on a racial basis – because they were white. The final decision of the US Supreme Court was announced in June 2003, but the Court did not decide precisely if race may be included or should be excluded from the admission procedure. The ambiguous decisions of the Supreme Court forced public institutions, however, to reconsider race as one of the factors of admission.[6]

California

The process of reshaping *affirmative action* began in July 1995, when the Regents of the University of California passed Proposition 209 which banned *affirmative action* in the university system of California. It was not caused by the direct influence of the court ruling, but we should keep in mind the Supreme Court verdict in the University of California Regents vs. Bakke case in 1978 that forced the University of California at Davis to admit Ralph Bakke to its Medical School, because previously he had been excluded on the basis of his race. This was found to be in violation of the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 stating that "no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance." While announcing the decision the Supreme Court was divided. Four justices stated that taking race into consideration was a violation of the US Constitution; the other four stated that, on the contrary, this was a necessary procedure to overcome the injustice of the past. Justice Harry Blackmun put in clearly: "In order to get beyond racism, we must first take account of race."[7]

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[4] Sh. Steele, *A Dream Deferred: The Second Betrayal of Black Freedom in America*, 1998; *A Dream Deferred*, an interview with Shelby Steele by David Gergen, PBS http://www.pbs.org/newshour/gergen/november98/gergen_11-30.html, (November 5, 2003).

[5] Ch. Hopwood et al. vs. State of Texas et al., (no. A 92 CA 563 SS), 94 Ed. Law Rep. 760; *Hopwood Ends Affirmative Action in 5th Circuit*, http://www.cir-usa.org/recent_cases/hopwood.html, (November 6, 2003).

[6] Gratz et al. vs. Bollinger et al., (no. 02-516); K.R. Weiss, *Judge Halts Law School's Racial Admission Policy*, "Los Angeles Times," March 28, 2001.

[7] University of California Regents vs. Bakke, 438 U.S. 265 [in:] http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=438&invol=265; D. Froomkin, *Affirmative Action Under Attack*, Washingtonpost.com, October 1998, http://www.washingtonpost.com/wp-srv/politics/special/affirm/affirm.htm, (November 6, 2003); Bowen, Bok, op.cit., p. 8. J. Traub, *The Class of Prop. 209*, "The New York Times Magazine," May 2, 1999.

The opinion of Justice Lewis Powell was the deciding factor. He stated that the use of rigid "race quotas" to overcome "societal discrimination" of minorities should be condemned, and a person like Bakke bears no responsibility for any injustice suffered by previously discriminated groups. On the other hand, Justice Powell ruled that admission officers could take race into account as one of several factors while evaluating the applications of minorities. Since the decision of the Court allowed colleges to use race as an admission factor, the majority of higher education institutions in California (and other states) continued *affirmative action* policy until 1995.

However, in response to the Proposition 209, the State of California launched in 2000 an initiative called *Cal Grants* that pay for tuition and fees at California's public universities and colleges. Students can also receive up to almost $10,000 if they are attending private institutions. The Cal Grants are aimed to help students with good grades and financial need.[8]

The results of the first year were disappointing. Fewer students received Cal Grants than those who had received financial aid during the last year of the old program. In 2000, there were over 136,000 high school graduates that were eligible for the grant, but only 57,000 of them received grants. California legislators said that the number of competitive grants (called Cal Grants A, aimed at students going to a university rather that a community college) should be increased to at least 40,000. But it was rather unrealistic. California Senator Deborah Ortiz added that with the complicated procedure and all the required bureaucracy, it was not surprising that a whole new group of prospective students and their families did not manage to fill in the application properly.[9]

Because of this, an increasing number of the most economically disadvantaged students in California are finding it necessary to begin their higher education in the community college system, where fees are considerably lower. The reason is simple – competition for Cal Grants B is less strong. At the same time, some enlightened colleges and universities look beyond the numbers in their admissions procedures. They include elements of disadvantage, personal circumstances, hardships, special talents and responses to adversity as part of the review and decision-making process. Legislators and universitiy officials have also found that without affirmative action it is necessary to focus on getting all students ready for a college education.[10]

The results were disappointing, but not surprising, to University of California administrators. Patrick S. Hayashi from Berkeley said that educational opportunities for Latinos and African Americans are not equal and their grades and test scores tend to be lower. Without *affirmative action* it is hard to find any substitute for racial preference.[11]

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[8] Ibidem; W. Trombley, *California's Improved Financial Aid Program*, "Cross-Talk," vol. 8, no. 4, Fall 2000.

[9] W. Trombley, *California Financial Aid Program Disappoints*, "Cross Talk," vol. 9, no. 3, Summer 2001.

[10] P. Burdman, *After Affirmative Action*, "Cross Talk," vol. 8, no. 1, Winter 2000; R.L. Siporin, *After Affirmative Action*, "Cross Talk," vol. 9, no. 4, Fall 2001.

[11] C. Irving, *There is No Valid Surogate for Race*, "Cross Talk," vol. 6, no. 2, Spring 1998.

Texas

The State of Texas changed its policy in 1996 in response to the Hopwood vs. Texas trial. It was decided to stop affirmative action as part of the admission process, and they put stress somewhere between high school and college. Texas adopted a law which required automatic admission for students who graduated with a GPA in the top ten percent of their high school classes.

At first the regulation did not work properly and the state faced a substantial drop in African-American and Hispanic undergraduate enrollments because automatic admission was not accompanied by the automatic awarding of a scholarship. But after a few years it has turned out that the *ten percenters* law works astonishingly well, especially evident in the fact that the academic achievements of *ten percenters* have been surpassing those of other first year students. There is, however, one disadvantage. All the problems concerning affirmative action in Texas began with the Law School, but since abandoning this policy law schools there have still been suffering a radical decrease in minority admissions.[12]

After many regional meetings of school boards, and college and state officials, Texas adopted a set of goals to be achieved by 2015, reconsidering its *ten percenters* policy. Texas wants to increase the number of students by 500,000, as well as to double the amount of federal research spending in Texas by supporting research programs with state money. And, what is more directly connected with post-affirmative action since the beginning of the academic year 2002/2003, schools with the lowest percentage of college-going students were linked with nearby college campuses to "establish clear, achievable goals" toward improvement. The state identified 91 high schools, with 5,000 students. There have been efforts to develop partnerships with neighboring institutions across state lines and with private schools in areas of the state where there are no public campuses.[13]

Michigan

Due to the date of the final decision of the Supreme Court announced June 23, 2003, Michigan did not have enough time to fully reshape a new policy. A pair of the Court decisions failed to clarify the situation of *affirmative action* policy. In these two cases the Court made the distinction between admissions policies that are "narrowly tailored" and those that are not. But no one explained the meaning of "narrowly tailored." Thus, the latest decision still leaves doors open to future lawsuits.

The University of Michigan, however, became the first higher education institution to craft its admissions policy under the Grutter and Gratz vs. Bollinger verdicts. The campus modified its admissions process to include a review of each individual applicant and to eliminate the automatic point assignments which the Supreme Court found unacceptable. And in this sense, the University of Michigan follows the practice of the University of California.[14]

The last decade was marked by important changes in US higher education policy as far as *affirmative action* is concerned. Due to the court rulings there was a tendency to

[12] C. Irving, *Texas' Demographic Challenge*, "Cross Talk," vol. 7, no. 2, Spring 1999.

[13] C. Irving, *Texas Ten Percenters*, "Cross Talk," vol. 10, no. 3, Summer 2002.

[14] B. Laird, *Changing Admission Policies*, "Cross Talk," vol. 11, no. 4, Fall 2003. Laird is the director of undergraduate admissions and relations at the UC Berkeley.

abandon mechanical affirmative policy. The most recent Supreme Court decision in Gratz vs. Bollinger case requires institutions to evaluate each applicant individually. This will be both time consuming and expensive, but it could help to preserve the diversity of the student body. As Bob Laird, the director of undergraduate admissions and relations at the University of California, Berkeley, says: "A college or university should carefully evaluate race-neutral alternatives. Assessing an applicant's circumstances does not mean automatically rewarding applicants who have faced difficulties. It means measuring their achievements against those challenges."[15]

Summarizing *affirmative action* no longer seems to be present in American higher education policy. The examples of the states of Texas and California prove that the only way of eliminating barriers is to start much earlier, even earlier than high school. And as Shelby Steele reiterates "It's very difficult to try to make up the skills that have not been developed when someone is 18 and older." It is too late to have mature citizens of the age of 19 (with their voting rights) and to try to force them into better educational environments. And from this perspectiv, George W. Bush's policy of "*no child left behind*" seems to be very promising. But, on the other hand, what Bill Clinton said about *affirmative action* is also true: "Mend it. But do not end it!"

[15] Ibidem; J. Thelin, *A History of American Higher Education*, Johns Hopkins University Press, Baltimore 2004, pp. 347–350.